

Members

Rep. Ron Herrell, Chairperson  
Rep. Dennis Avery  
Rep. John Day  
Rep. David Frizzell  
Rep. Phyllis Pond  
Rep. Dean Young  
Sen. Richard Bray  
Sen. Murray Clark  
Sen. David Long  
Sen. William Alexa  
Sen. Glenn Howard  
Sen. Samuel Smith



## INTERIM STUDY COMMITTEE ON CIVIL AND FAMILY LAW ISSUES

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Authority: Legislative Council Resolution 01-2  
(Adopted June 7, 2001)

### MEETING MINUTES<sup>1</sup>

Meeting Date: October 3, 2001  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington  
St., Senate Chambers  
Meeting City: Indianapolis, Indiana  
Meeting Number: 3

**Members Present:** Rep. Ron Herrell, Chairperson; Rep. Dennis Avery; Rep. John Day; Rep. Phyllis Pond; Sen. Richard Bray; Sen. David Long; Sen. William Alexa; Sen. Glenn Howard; Sen. Samuel Smith.

**Members Absent:** Rep. David Frizzell; Rep. Dean Young; Sen. Murray Clark.

**Representative Herrell** called the meeting to order at 1:40 p.m. Rep. Herrell announced that the items before the committee today were (1) Civil immunity for volunteers; (2) the Uniform Parentage Act; (3) Tiered Corrections; and (4) Family law as it applies to marriage.

#### **I. Civil immunity for volunteers**

**Joe Duray**, of the Military/Veterans Coalition of Indiana, informed the

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

committee that the veterans were interested in immunity for volunteers because many veterans were volunteers. Mr. Duray then introduced Harold Henneke.

**Mr. Henneke** provided the committee members with a handout describing the federal Volunteer Protection Act of 1997. (See Exhibit 1). Mr. Henneke recommended that Indiana come into compliance with the federal legislation. Mr. Henneke noted that there are tens of thousands of volunteers in Indiana, and that these volunteers need protection when they are acting within the limits of their assigned responsibilities.

### ***Discussion***

In response to questions from Rep. Herrell and Rep. Avery, Mr. Henneke stated that he did not know of any specific problems that had arisen due to lack of civil immunity for volunteers, nor did he know how many suits had been filed against volunteers in Indiana. Rep. Avery asked Mr. Henneke to describe the federal law providing immunity for volunteers; Mr. Henneke noted that: (1) the federal law preempts state law unless a state explicitly opted out of the federal law; (2) the federal law exempts volunteers and non-profits if the volunteer was acting within the scope of his assigned responsibilities and did not act with gross negligence; (3) the law does not apply to the operation of vehicles requiring a license; and (4) the law does not apply to criminal acts or acts performed by an intoxicated volunteer. In response to a question from Rep. Avery, Sen. Alexa informed the committee that although the federal volunteer act was a federal law, it would also apply to suits brought in state courts.

**Robert Hellmann**, representing the Indiana Trial Lawyers' Association, provided two handouts to the committee listing the civil immunity enjoyed by many different people in Indiana (See Exhibit 2 and Exhibit 3). Mr. Hellman noted that there was no evidence that volunteers needed additional protection from civil immunity beyond that already provided in the Indiana Code. Many volunteers would be covered by other immunity provisions in Indiana law, such as the good samaritan law. Further, there are serious constitutional questions about the federal law: in light of recent Supreme Court federalism discussions, it is likely that the federal volunteer act would not pass muster under either the Commerce Clause or the 14th amendment. The federal law also interferes with a core state function. Indiana should opt out of the federal law. (Mr. Hellmann provided the committee with a handout containing a draft of an "opt out" provision. See Exhibit 4). Volunteers would still be protected if Indiana opted out of the federal legislation. Indiana should also consider limiting the liability of nonparties to suit, especially if it does not opt out of the federal volunteer act (See Exhibit 5).

**Stan Huseland**, representing the Military/Veterans Coalition of Indiana, addressed the committee and recommended that Indiana not opt out of the federal legislation. The federal act should also be the law in Indiana.

### ***Discussion***

Rep. Herrell noted that the federal law did act as a shield to protect some people, but that state legislators did not like how the federal government constantly told the states what to do. Mr. Huseland stated that he understood this position,

and that the Military/Veterans Coalition would be willing to work with the trial lawyers to adopt model language that would protect volunteers in Indiana.

In response to a question from Rep. Avery, Mr. Huseland stated that he did not believe that Mr. Hellmann had said anything that was inaccurate, but that he wanted to make sure that Indiana volunteers had solid protection.

## **II. The Uniform Parentage Act**

**John McCabe** of the National Conference of Commissioners on Uniform State Laws gave the following testimony in support of the Uniform Parentage Act (see Exhibit 7): A uniform parentage act is needed because consistency is especially important in dealing with issues of family law. Further, the UPA contains several provisions that were drafted in light of recent developments that affect families, such as gestational agreements (where a woman bears a child conceived in vitro from the egg and sperm of two other individuals) and the ability of accurate DNA testing to establish paternity. It is better for states to get together and adopt uniform laws than for the federal government to preempt an entire area of law.

### ***Discussion***

Sen. Long asked whether we do not have a fairly uniform child support enforcement act for dealing with situations where parents live in two different states. Mr. McCabe agreed, but noted that this law was only effective if paternity had already been established.

Rep. Pond asked what would happen if there was a gestational agreement, the child was born with a disability, and the parents decided that they did not want the child. Mr. McCabe responded that it would depend on the particular facts of the situation, but the responsibility would likely rest with the biological parents, that is, the parents who had contributed the genetic material to the child.

In response to a question from Rep. Avery concerning how Indiana law was inconsistent with the law of other states, Mr. McCabe responded that the problem was not that Indiana law was inconsistent, but that it would be better if laws in this area were uniform because this would promote more certainty.

## **III. Tiered corrections**

**Randy Koester**, from the Department of Correction, appeared before the committee and stated that he was available to answer any questions committee members might have about the DOC's "youth incarcerated as adults program." Mr. Koester also provided the committee with a handout describing the youth incarcerated as adults program.

In response to a question from Sen. Howard about recidivism rates, Mr. Koester stated that it was difficult for DOC to compute recidivism rates because (1) there was not a good definition of recidivism; and (2) the DOC lost track of people after they were released, and would only know if people committed new crimes if they were arrested, convicted, and sent back to the DOC.

In response to a question from Rep. Pond, Mr. Koester stated that the DOC did offer vocational education programs, but there was not enough funding for everyone who wanted vocational education to attend these programs, and thus

there was often a long waiting list. Mr. Koester noted that all offenders under the age of 18 were required to enroll in school.

**Judge James Payne**, Marion County Juvenile Court Judge, testified that juvenile judges would be interested in a tiered correctional system for juvenile offenders. Indiana should reevaluate its entire juvenile code, as well as programs for youthful offenders: Indiana should be able to implement more and better programs for juvenile offenders. It is also important to have appropriate training in independent life skills. The two-tiered system now used for juveniles is insufficient to deal with the complexity of the world today. All juvenile judges have seen cases where the age and sophistication of the children meant that they could not really be appropriately housed in juvenile or in adult facilities. This is why judges need a third option. New Mexico, Colorado, and Minnesota all have instituted three tiered juvenile justice systems. Indiana should also reconsider its automatic waiver provisions, as some offenders should not be automatically waived to adult court.

#### **IV. Family law as it applies to marriage**

There was no testimony or discussion of this issue.

#### **V. Adjournment**

The meeting adjourned at 4:00 p.m. The final meeting is scheduled for October 24, 2001, at 10:30 a.m., in the Statehouse